

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Telephone Number:

Refer Reply To:  
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PLR-146144-11  
Date:  
May 1, 2012

Decedent =  
Trust =  
Date 1 =  
Date 2 =  
QTIP Family Trust =

Dear :

This letter responds to your submission dated October 28, 2011, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to treat a trust as two separate trusts for purposes of § 26.2652-2(c) of the Generation-skipping Transfer Tax Regulations.

On Date 1, Decedent formed Trust. On Decedent's death survived by his spouse, Trust is divided into two trusts, a marital trust and a family trust. During the spouse's lifetime, the spouse is the sole income beneficiary of both trusts.

Decedent died on Date 2, survived by his spouse. On a timely filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, Decedent's co-executors elected to treat a portion of the assets passing to the family trust as qualified terminable interest property (QTIP) so that that portion qualified for the marital deduction under § 2056(b)(7) of the Internal Revenue Code (QTIP Family Trust.) In addition, the co-executors made a special election under § 2652(a)(3) to treat the assets of QTIP Family Trust, for generation-skipping transfer (GST) tax purposes, as if the election under § 2056(b)(7) had not been made (a "reverse" QTIP election). The co-executors allocated Decedent's remaining GST exemption to QTIP Family Trust.

Subsequent to the filing of Decedent's Form 706, § 26.2652-2(c) was issued. This regulation provides a transitional rule that allows certain trusts subject to a "reverse" QTIP election, to which GST exemption had been allocated, to be treated as two separate trusts, so that only a portion of the trust would be treated as subject to the "reverse" QTIP election, and that portion would be treated as having a zero inclusion

ratio. The deadline for making the election set forth in the transitional rule was June 24, 1996.

The co-trustees of QTIP Family Trust are requesting an extension of time to elect to treat QTIP Family Trust as two separate trusts pursuant to § 26.2652-2(c) so that one trust has an inclusion ratio of zero due to the previous allocation of Decedent's remaining GST exemption to QTIP Family Trust and the other has an inclusion ratio of one for GST tax purposes. The "reverse" QTIP election would be treated as applying only to the trust with the zero inclusion ratio.

Section 2601 imposes a tax on every generation-skipping transfer. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), as in effect for the year at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2652(a)(3) states that, with respect to any trust for which a deduction is allowed under § 2056(b)(7) (regarding qualified terminable interest property), the estate of the decedent may elect to treat all of the property in such trust for purposes of the GST tax provisions as if the QTIP election had not been made. This election is referred to as the "reverse" QTIP election. The consequence of a "reverse" QTIP election is that the decedent remains, for GST tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST exemption may be allocated to that QTIP trust.

Section 26.2652-2(a) provides that a "reverse" QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies.

Section 26.2652-2(c) provides that if a "reverse" QTIP election is made with respect to a trust prior to December 27, 1995, and the GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's

GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The “reverse” QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this section is made by attaching a statement to a copy of the return on which the “reverse” QTIP election was made under § 2652(a). The statement is to be filed before June 24, 1996.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

Section 301.9100-3(c)(1) provides, in part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time of 120 days from the date of this letter is granted in which to make the election under § 26.2652-2(c) to treat QTIP Family Trust as two separate trusts, one of which has a zero inclusion ratio by reason of Decedent's GST exemption previously allocated to QTIP Family Trust. The election should be made by completing the statement required in § 26.2652-2(c) and submitting the election, a copy of the return on which the “reverse” QTIP election was made under § 2652(a)(3), and a copy of this letter, to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center, Stop 82, Cincinnati, OH 45999.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

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JAMES F. HOGAN  
Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes (1)  
Copy of this letter (2)

cc: